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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.R., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. PETER A., Defendant and Appellant.	D060153 (Super. Ct. No. EJ003133)

APPEAL from orders of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Peter A., formerly the presumed father of dependent minor A.R., appeals a juvenile court order denying his request to have A.R. placed with him, or alternatively, to start the case anew and offer him reunification services based on a violation of his due process right to notice. He also appeals the court's orders granting A.R.'s motion to rebut

his presumed father status and striking his name from the dependency petition. Peter contends his constitutional and statutory due process rights were violated by the total lack of notice. He further contends the court abused its discretion by: (1) denying his petition for modification under Welfare and Institutions Code section 388[1] by which he sought to challenge the due process notice violation; and (2) finding A.R.'s motion to rebut his presumed father status was timely filed and granting that motion. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

A.R. was born in June 2009 to Renee M. and Kevin R. (together, the parents). At the time of A.R.'s birth, Renee was still legally married to Peter, although they had been separated since April 2006. Renee and Peter had one child together, T.A., born in 2005. Peter filed for divorce in April 2006, but the family court made no orders with respect to the marriage. T.A. lived with Peter following his separation from Renee.

In August 2009, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (b), alleging two-month-old A.R. was at substantial risk of harm because Renee had a violent confrontation with a roommate, she used drugs, and she left A.R. with Kevin, who was a registered sex offender. Kevin was listed as A.R.'s father, and Peter was listed as T.A.'s father.

At a detention hearing, the court found, in Peter's absence, that Peter was A.R.'s presumed father by marriage under Family Code section 7611, subdivision (a). When

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1 Statutory references are to the Welfare and Institutions Code unless otherwise specified.

genetic tests showed Kevin was A.R.'s biological father, the court entered a judgment of paternity on his behalf. Although Agency knew Peter's address, it did not send him notice of the proceedings.

At the jurisdiction and disposition hearing, the court sustained the allegations of the petition, declared A.R. a dependent, removed her from parental custody and placed her in foster care. The court ordered reunification services for the parents.

During the next six months, the parents did not make progress with their case plans.[2] Peter's name and address were listed in Agency's six-month review report. At the six-month review hearing on August 16, 2010, the court found the parents had not made substantive progress with their case plans and returning A.R. to parental custody would be detrimental to her. The court terminated services and set a hearing under section 366.26 to select and implement a permanent plan for A.R.

Two days later (August 18), the court clerk mailed Peter a copy of the August 16 minute order. The minute order contained the court's rulings, which indicated a permanent plan would be selected for A.R. The certificate of service explained Peter had a right to an attorney and a right to appeal the court's orders. From then on, the court clerk sent Peter copies of minute orders from all hearings.

On September 24, 2010, Agency provided Peter with notice of the December 13 selection and implementation hearing by substitute service on Peter's brother at Peter's address. That notice contained Agency's recommendation for termination of parental

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2 Renee was incarcerated throughout most of the proceedings.

rights and adoption as A.R.'s permanent plan. However, Agency did not also mail Peter that notice as required by statute.[3]

The selection and implementation hearing was continued several times. On February 28, 2011, the court set a special hearing for March 4 on issues of Peter's parentage and efforts to locate him. It also set the continued selection and implementation hearing for May 20. On March 2, Agency personally served Peter with notice of these hearings. However, when Peter did not appear in court on March 4, the court continued the matter to May 9. Peter again failed to appear on May 9, and the court continued the matter to May 20.

Peter appeared in court on May 20, nine months after he first received information about the dependency proceedings. The court appointed counsel for him. Peter filed a parentage inquiry form stating no judgment had issued that he was A.R.'s father; he and Renee were not living together at the time A.R. was conceived or born; he never signed a document acknowledging A.R. was his child; and A.R. had been to his home five times in 2009. Peter also indicated Renee never told him he was A.R.'s father; he did not tell anyone he was her father; he never supported her; and he was not listed as her father on her birth certificate.

Peter requested a presumed father finding and a paternity hearing. He indicated that if he had presumed father status, he would be asking for placement of A.R. or

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[3] There was some indication Agency may have mailed the notice to Peter, but lost the proof of service.

services. Agency and minor's counsel requested the opportunity to rebut Peter's presumption of paternity.

Peter filed a section 388 petition for modification, alleging he had not received proper notice of the hearings that occurred before the selection and implementation hearing. He requested modification of the disposition order and placement of A.R. in his care, or alternatively, reunification services. Peter claimed he was a presumed father who was never given the opportunity to seek custody of A.R. or show the court he could provide for her.

In response to Peter's section 388 petition, Agency admitted it had not made sufficient search efforts for Peter, but it did provide him with notice of the selection and implementation hearing by substitute service at his home in September 2010. Agency also personally served Peter with notice of the proceedings on March 2, 2011. Even after receiving notice, Peter did not contact Agency or the court before appearing on May 20.

At the hearing on his section 388 petition, Peter asked the court to set aside the judgment of paternity issued in favor of Kevin on October 29, 2009, on the ground Peter had not received notice of that hearing. Agency filed a motion seeking to rebut Peter's presumed father status.[4] Peter objected on the ground the motion had not been timely filed. The court set a hearing on paternity issues and Peter's section 388 petition.

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4 The court commented that the presumed father finding as to Peter, made by another judicial officer, was problematic because Peter was not present when that finding was made. The court was puzzled, as are we, by how Peter was declared a presumed father without being present, without requesting presumed father status and without alleging specific facts entitling him to that status.

At that hearing, the court found Agency lacked standing to rebut Peter's presumed father status, but it could join in minor's counsel's motion, which the court ruled was timely filed.[5] The court then considered the evidence, including Peter's testimony that he did not have a father-daughter relationship with A.R. Peter said he saw Renee after their separation, and noticed she was pregnant. He knew he was not the baby's father because he had not had sexual relations with Renee in the nine months before A.R.'s birth. Peter knew Kevin was A.R.'s biological father. Renee brought A.R. to Peter's home at least three times.

Peter further testified he learned about A.R.'s dependency case in the summer of 2010. Renee told him A.R. was living with Kevin's relatives. Although Peter had the ability to visit A.R., he declined to do so. Peter acknowledged he had received some paperwork in December 2010 indicating A.R. was going to be adopted. At first he did not understand why it was sent to him, but then realized he was still married to Rene[6] and therefore the state had an obligation to inform him. Peter denied talking to Renee or Kevin before coming to court on May 20, but admitted Kevin drove him to and from court hearings on several occasions. He denied that Kevin asked for his help in getting A.R. back. Peter said he had come forward to be involved in A.R.'s life because A.R. was T.A.'s half sister, and this was an opportunity for him "to get into the adoption field

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5 The court made its timeliness finding without prejudice, noting Peter could renew his motion at the close of evidence.

6 Peter's petition for dissolution of marriage to Renee was filed in April 2006 and withdrawn in November 2006. No ruling or judgment was made in the matter.

or adoption scene where [he] could do some good" by raising another child and helping someone in the community. He admitted he knew nothing about A.R.'s physical or emotional development.

At the end of trial that day, Peter asked the court to consider the issue of defective notice without the need for a section 388 petition. He argued the proper remedy was to return the case to jurisdiction. The court set hearings to rule on the due process motion and take further evidence.

A.R.'s caregivers each testified they were committed to adopting A.R. They knew Peter wanted custody of A.R. The caregivers each recounted a conversation they had with Kevin on May 20 outside the courtroom. Kevin told them he had had a "heart-to-heart" conversation with Peter and brought him to court that day because he was concerned about losing custody of A.R. Kevin believed it would benefit him to have Peter there, and told him, "You have your daughter. I need you to come to court to help me keep mine."

Social worker Linda Johanesen testified A.R. had been traumatized when she was previously removed from her placement with a paternal relative with whom she had lived for nine months. Consequently, Johanesen carefully chose new caregivers who could manage the transition in a healthy, nurturing manner, and who could provide A.R. with significant one-on-one attention and cuddling to help her develop a sense of security and predictability. A.R. was now strongly attached to these caregivers and was thriving in their care. The caregivers were extremely committed to adopting A.R. and they had an

approved home study. If allowed to adopt A.R., they were willing to facilitate a sibling relationship with T.A.

In Johanesen's opinion, placing A.R. with Peter would not be in her best interests. Peter was a stranger to A.R. The last time Peter saw A.R., she was two months old. Peter had not come forward early in the proceedings when he learned about them. A.R. had already experienced three placements, and another move would greatly traumatize her and compromise her self-esteem.

The court indicated all evidence received as to the parentage issue would also be considered in ruling on Peter's due process challenge and section 388 petition. After hearing arguments of counsel, the court again found the motion to rebut Peter's presumed father status was timely filed.

The court then heard arguments as to Peter's due process claim, his section 388 petition and whether his presumption of paternity had been rebutted. The court found Peter and Kevin were not credible with respect to Peter's motivation for coming to court, and Peter's appearance was facilitated by Kevin for the purpose of delaying the selection and implementation hearing. In contrast to the testimony of Peter and Kevin, the court found the testimony of A.R.'s caregivers was both credible and consistent. Also, the social worker's testimony about A.R.'s current placement was credible.

The court ruled Peter's due process challenge was properly raised in his section 388 petition, requiring the court to consider A.R.'s best interests. The court acknowledged Agency had not made reasonable search efforts for Peter and had not complied with statutory notice until the selection and implementation hearing was set.

Nevertheless, it was not in A.R.'s best interests to grant the requested relief under either a section 388 analysis or a strict due process analysis. The court reasoned A.R. had no relationship with Peter; Peter declined the opportunity to appear in court earlier; and he declined the opportunity to maintain a relationship with Renee when she was pregnant with A.R. Even before A.R. was removed from parental custody, Peter made no effort to act as a parent to her, support her or be a part of her life. After Renee went to prison, Peter did not maintain contact with A.R. or facilitate sibling visits. When Peter became aware of the dependency proceedings, he did nothing to seek out A.R. or try to maintain a relationship between A.R. and T.A.

The court further found there would be potential harm to A.R. if she were removed from her current caregivers' home, especially after having been in several other placements. There was no evidence it would be in A.R.'s best interests to delay the proceedings and return to disposition for the purpose of forcing her to develop a relationship with Peter. Thus, the court found, placing A.R. with Peter would be detrimental to her.

As to paternity, the court found the presumption in favor of Peter had been rebutted, by clear and convincing evidence, under Family Code section 7612, subdivisions (a) and (c). The court granted the request of minor's counsel to strike Peter's name from A.R.'s dependency petition, and let stand the judgment of paternity entered on behalf of Kevin.

DISCUSSION

I

Peter contends his constitutional and statutory due process rights were violated because he did not receive timely notice of the dependency proceedings, which deprived him of the opportunity to confer with counsel and meaningfully participate in the case as A.R.'s presumed father. He asserts the total lack of notice is structural error requiring automatic reversal, or alternatively, the error requires reversal because it cannot be deemed harmless beyond a reasonable doubt. The remedy Peter seeks is to have A.R. placed in his care, or have the case returned to the jurisdictional and dispositional phase so he can receive reunification services.

A

Due process requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to object. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418; *In re Justice P.* (2004) 123 Cal.App.4th 181, 188.) In the context of dependency cases, parents are entitled to due process notice of juvenile court proceedings affecting the care and custody of their children. (*In re J.H.* (2007) 158 Cal.App.4th 174, 182; *In re Claudia S.* (2005) 131 Cal.App.4th 236, 247.) The right to notice applies to both presumed and alleged fathers. (§§ 290.1, 290.2, 291, 294, 295, 297, 302.)

Agency concedes, and the court found, Peter was not provided with notice of the jurisdiction, disposition and six-month review hearings. At the time of those hearings, Peter was considered to be A.R.'s presumed father because he was still married to Renee.

Although the lack of notice is undisputed, we must nevertheless determine, applying a de novo standard of review, the effect of that error. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222 [where question is one of law, we review claimed constitutional violation de novo]; *In re J.H., supra,* 158 Cal.App.4th at p. 183 [notice errors are reviewed de novo].)

B

We disagree with Peter's characterization of the error as "fatal," which would require us to return the case, more than two years after its inception, to the jurisdictional and dispositional phase of the proceedings. The lack of strict compliance with notice requirements in a dependency proceeding does not render subsequent proceedings void in the absence of prejudice. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 625 [goal of resolving dependency actions expeditiously would be thwarted if proceeding had to be redone without a showing the new proceeding would have a different outcome].) This is especially true where, as here, a party receives *late* or *defective* notice, rather than *no* notice, and where the subject of the proceedings is waiting to have her adoptive placement made permanent and secure "as soon as reasonably possible." (*In re James F.* (2008) 42 Cal.4th 901, 918 [procedural errors in dependency cases should not be treated as structural defects requiring automatic reversal; cf. *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1116 [error was reversible per se where Agency never attempted to give mother notice of selection and implementation hearing at which her parental rights were terminated despite knowing her address and having repeated contact with her]; *In re Claudia S., supra,* 131 Cal.App.4th at pp. 250-251 [reversible error where court

conducted all hearings, then terminated reunification services, without any notice to the parents or children, all of whom were out of the country].) Under the circumstances present here, we consider whether the error in notice was harmless beyond a reasonable doubt. (*In re James F., supra,* 42 Cal.4th at pp. 915, 918; *In re A.D.* (2011) 196 Cal.App.4th 1319, 1327; *In re J.H., supra,* 158 Cal.App.4th at p. 183; *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132; *In re Angela C.* (2002) 99 Cal.App.4th 389, 393-395; *In re Daniel S.* (2004) 115 Cal.App.4th 903, 912; *Chapman v. California* (1967) 386 U.S. 18, 24.)

C

The belated notice Peter received does not amount to a wholesale denial of process due a father in Peter's circumstances. (See *In re Paul H.* (2003) 111 Cal.App.4th 753, 758-759.) Peter admitted he was aware of Agency's involvement and A.R.'s placement with Kevin's relatives as early as the summer of 2009, yet he never inquired about A.R.'s well-being or sought to be a part of her life. Peter had had actual notice of the ongoing dependency proceedings since August 2010, when he began receiving copies of the court's minute orders, which informed him of the possibility of A.R.'s eventual adoption. Despite having received information that he had a right to an attorney and a right to appeal the court's orders, Peter did nothing. Thus, his lack of participation is attributable, at least in part, to him.

Even when Agency personally served Peter with notice of upcoming hearings, he failed to appear in court on several occasions. Peter had no interest in A.R., presumably because she was someone else's daughter. Only after Kevin asked Peter to help him

retain his parental rights to A.R. did Peter finally appear in court. From this, we can reasonably infer that had Peter received proper notice of the earlier proceedings, he would not have participated in reunification with a child he never acknowledged as his, even when given the opportunity to do so. Further, the court would not have placed A.R. with Peter because he had no genuine interest in this child and no sustained commitment to her. Because we cannot say Peter would have obtained a different or more favorable result, any error in not giving him earlier notice was harmless beyond a reasonable doubt. (*In re J.H., supra,* 158 Cal.App.4th at p. 185; *In re James F., supra,* 42 Cal.4th at p. 918 [reversal not required where outcome of proceeding is not affected by lack of notice].)

II

Peter contends the court abused its discretion by denying his section 388 petition, by which he sought to modify the court's previous orders based on lack of notice to him. Peter asserts A.R.'s best interests would be served by placing her with him, or alternatively, returning the case to the dispositional phase and offering him reunification services because A.R. has an interest in developing a relationship with him and with T.A.

A

Under section 388, a party may petition the court to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, there is a change of circumstances or new evidence, and the proposed change is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) A parent may raise a due process challenge based on lack of

notice by filing a section 388 petition. (*In re Justice P., supra,* 123 Cal.App.4th at p. 189.)[7]

Whether a previous court order should be modified and a change would be in the child's best interests are questions within the sound discretion of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our decision for that of the juvenile court. (*In re Stephanie M.*, at pp. 318-319.) In ruling on a modification petition, the court may consider the entire factual and procedural history of the case. (*In re Justice P., supra*, 123 Cal.App.4th at p. 189.)

B

It is undisputed that Peter showed changed circumstances because he did not receive proper notice of the earlier proceedings. However, Peter did not carry his burden of showing the requested modification—placing A.R. with him or starting the

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7 Peter asserts he should have been able to raise the issue of a due process notice violation without filing a section 388 petition. However, because Peter sought to set aside previous court orders, filing a section 388 modification petition was appropriate. (*In re Justice P., supra,* 123 Cal.App.4th at pp. 187-188.) In any event, the juvenile court considered Peter's argument under both a section 388 analysis and a strict due process analysis. Regardless of the procedural mechanism by which a court considers a due process challenge, the minor's best interests must always be a consideration.

proceedings anew so that he could receive reunification services—was in A.R.'s best interests.

The concept of a child's best interests " 'is an elusive guideline' " that cannot be rigidly defined. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) Its purpose is to maximize a child's ability to mature into a stable, well-adjusted adult. (*Ibid.*) "[A] primary consideration in determining the child's best interests is the goal of assuring stability and continuity. [Citation.] 'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.' [Citations.]" (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.)

Here, the evidence showed Peter never intended to have a relationship with A.R. because he was confident he was not her father. Despite having the opportunity to maintain contact with A.R., even before she became a dependent of the court, Peter declined to do so. His few encounters with her were the result of Renee's efforts to have A.R. visit T.A. Even after Peter knew A.R. was a dependent child living with Kevin's relatives, he showed no concern for her, and did not try to arrange visits for A.R. and T.A. He admittedly knew nothing about A.R.'s physical or emotional development. Thus, the court could reasonably find Peter was utterly disinterested in maintaining or developing a relationship with A.R., and came forward at the last possible moment only at the request of biological father Kevin to help him retain his parental rights. Peter's stated motivation for wanting to foster a relationship with A.R.—"to get into the adoption

field or adoption scene where [he] could do some good" by raising another child and helping someone in the community—does not bode well for A.R.'s ability to find the nurturing and commitment she so desperately needs. Placing A.R. with Peter, who is a total stranger to her, would not be in her best interests.[8]

Where, as here, a parent belatedly decides to participate in dependency proceedings, "it does not automatically follow that the best interests of the child will be promoted by going back to square one and relitigating the case. Children need stability and permanence in their lives, not protracted legal proceedings that prolong uncertainty for them." (*In re Justice P.*, *supra*, 123 Cal.App.4th at p. 191.) At this late stage of the proceedings, A.R. no longer has an interest in developing a relationship with a man who, for more than two years, was indifferent to her. A.R. has lived with her caregivers for a significant time, is strongly attached to them and is thriving in their care. The caregivers are committed to adopting her. A.R. has already experienced three placements, and another move would greatly traumatize her and compromise her self-esteem. Returning the case to disposition and ordering services for Peter in the off-chance he could develop a parent-child relationship with A.R. in the next six months flies in the face of the statutory imperative to have these proceedings timely resolved and would be contrary to A.R.'s compelling interest in permanency. The court properly denied Peter's section 388 petition.

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[8] We do not condone Agency's failure to give Peter proper notice during the earlier stages of the proceedings. Nevertheless, this does not excuse Peter's failure to show his requested relief was in A.R.'s best interests.

III

Peter contends the court abused its discretion by finding minor's counsel, on behalf of A.R., timely filed the motion to rebut his presumed father status. He asserts the motion was not brought within a "reasonable time" of learning relevant facts because minor's counsel already knew these facts: Peter was not A.R.'s biological father; there was a judgment of paternity in favor of Kevin; there was no "real" marriage between Peter and Renee; and Peter and A.R. did not have a parent-child relationship.

Under Family Code section 7630, subdivision (a)(2), a motion to rebut a presumption of paternity by marriage must be "brought within a reasonable time after obtaining knowledge of relevant facts." Whether a motion is brought within a "reasonable time" is addressed to the sound discretion of the trial court based on all the circumstances of the case. (See *Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1200-1201.)

As the juvenile court here noted, this is a "very unique" case in which facts relevant to Peter's paternity became known well after the initial hearings. Peter was given presumed father status at the detention hearing without being present, without requesting presumed father status and without alleging specific facts entitling him to that status. Little was known at that time, other than Peter and Renee were still legally married. By the time of Peter's first court appearance on May 20, 2011, other events had occurred and significant facts had come to light. Kevin had obtained a judgment of paternity based on genetic tests showing he was A.R.'s biological father; he had participated in court-ordered reunification services; and he was requesting custody of

A.R. When Peter finally appeared in court, he filed a parentage inquiry form stating no judgment had issued that he was A.R.'s father; he and Renee had not been living together at the time A.R. was conceived or born; he never signed a document acknowledging A.R. was his child; and A.R. had not been to his home since she was an infant. Peter also indicated Renee never told him he was A.R.'s father, and he had taken no steps to acknowledge or show he was A.R.'s father. Even though he admitted he had no relationship with A.R., Peter now wanted to have her placed with him, or alternatively, participate in reunification services.

After becoming aware of these critical facts, minor's counsel, on behalf of A.R., sought to rebut Peter's presumption of paternity. The juvenile court accepted this as sufficient to show the motion was brought within a reasonable time after these facts developed. We cannot say the court abused its discretion by finding the motion was timely. (See *In re K.D.* (2004) 124 Cal.App.4th 1013, 1018 [court does not abuse its discretion unless it makes an arbitrary, capricious or patently absurd determination].)

IV

Peter contends the court abused its discretion by granting A.R.'s motion to rebut his presumed father status. He asserts: (1) there was no clear and convincing evidence this was "an appropriate action" in which to rebut the marital presumption under Family Code section 7612, subdivision (a); (2) there were no competing presumptions, and any conflict should have been resolved in favor of Peter's presumption under Family Code section 7612, subdivision (b); and (3) a presumption cannot be rebutted under Family

Code section 7612, subdivision (c) by a judgment of biological paternity entered in the same case.

A

A man is presumed to be the father of a child born during, or within 300 days after termination of, his marriage to child's mother. (Fam. Code, § 7611; *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 937.) The marital presumption of Family Code section 7611, subdivision (a) is a rebuttable one affecting the burden of proof and may be rebutted "in an appropriate action" by clear and convincing evidence. (Fam. Code, § 7612, subd. (a).) The child has standing "to bring an action to declare the existence or nonexistence of the father and child relationship presumed as a result of the mother's marriage to the presumed father." (*Dawn D. v. Superior Court, supra*, 17 Cal.4th at p. 938, fn. 5, citing Fam. Code, § 7630, subd. (a).)

"The paternity presumptions are generated by society's interest in preserving the integrity of the family and legitimate concerns for the welfare of the child." (*Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605, 613.) The purpose of these presumptions in the context of dependency cases is to determine whether a man has shown a sufficient commitment to his parental responsibilities to be afforded rights—including reunification services and custody—not given to a biological father. "The Legislature, in its wisdom, made the presumptions of fatherhood it created in [Family Code] section 7611 rebuttable presumptions, affording the court the discretion to rebut the presumption if it is fitting to do so. [Citation]." (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1212.) Whether a particular dependency case is an appropriate action in which to find the presumption is rebutted

under Family Code section 7612, subdivision (a) is a matter for the trial court's sound discretion based on the circumstances of the case. (*In re Nicholas H.* (2002) 28 Cal.4th 56, 58-59, 63, 70; *In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 603-604; *In re A.A.* (2003) 114 Cal.App.4th 771, 781.)

In deciding whether the particular circumstances permit a presumption to be rebutted, courts are guided by "the state's preference to not remove children from homes where they have a strong emotional bond with a man who is not the child's biological father but who has met the statutory requirements for presumed father status." (*In re A.A.*, *supra*, 114 Cal.App.4th at p. 780.) Thus, it may not be appropriate to rebut a presumption of paternity in a case where a developed parent-child relationship has afforded a child social and emotional strength and stability that can substitute for biological ties. (*Id*. at pp. 780-781, citing *In re Nicholas H.*, *supra*, 28 Cal.4th at p. 62.) Courts have increasingly "resolved paternity disputes by looking to the existence and nature of the social relationship between the putative father and child." (*Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36, 51.) Indeed, a man who has lived with a child and treated the child as his son or daughter is much more important, at least to the child, than a man whose paternity is based only on biology. (*Ibid*.; see also *Neil S. v. Mary L.* (2011) 199 Cal.App.4th 240, 248-249.)

B

Here, Peter achieved presumed father status under Family Code section 7611, subdivision (a) because he and Renee, although separated for nearly three years, were

still legally married when A.R. was born.[9] Despite knowing his wife had had a baby, and despite having the ability and opportunity to develop a parent-child relationship with A.R., Peter took no action. At the time A.R. brought the motion to rebut Peter's presumed father status, Peter was a total stranger to her. He never lived with her, treated her as his daughter or showed any commitment to her or her welfare, even when he knew she was a dependent of the court. Even after receiving notice of the court proceedings, Peter ignored them and tried to avoid responsibility for A.R. He appeared in court at the eleventh hour to assert his rights based on questionable motives and under circumstances that greatly concerned the juvenile court. In finding Peter's presumed father status had been rebutted, the court could give great weight to the fact there was no developed parent-child relationship worth preserving and protecting. (*Lisa I. v. Superior Court, supra,* 133 Cal.App.4th at p. 613; *Neil S. v. Mary L., supra*, 199 Cal.App.4th at p. 248.) Indeed, clear and convincing evidence showed it would be detrimental to A.R. to disrupt the security and stability she had with her current caregivers so that Peter could try to create a family of strangers. (See *In re Sarah C.* (1992) 8 Cal.App.4th 964, 975 [purpose of reunification services is furthered by "providing services to the presumed father who has had at least some sort of familial relationship to the child" before juvenile court intervention].)

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9 Unlike the conclusive presumption of Family Code section 7540, this presumption does not require proof of cohabitation. (*Craig L. v. Sandy S., supra,* 125 Cal.App.4th at p. 48; *Neil S. v. Mary L., supra,* 199 Cal.App.4th at p. 247.)

Moreover, just as biology is not determinative, neither is marriage. (*Craig L. v. Sandy S., supra*, 125 Cal.App.4th at p. 50, fn. 3.) The underlying reason for the marital presumption—to protect the integrity of a marriage and the existing parent-child relationship—does not apply here where there was no marital union to disrupt and where A.R. never derived any social or emotional strength or stability from Peter. Maintaining Peter's presumption would lead to a result that "defies reason and common sense" because A.R. would be "given" a father simply to preserve the integrity of a family unit that never existed.[10] (*County of Orange v. Leslie B.* (1993) 14 Cal.App.4th 976, 983 [discussing conclusive presumption based on marriage]; *Alicia R. v. Timothy M.* (1994) 29 Cal.App.4th 1232, 1237 [same].) On this record, the court could reasonably find this was an appropriate action in which the marital presumption of Family Code section 7611, subdivision (a) was rebutted by clear and convincing evidence.

C

Under Family Code section 7612, subdivision (b), if two or more presumptions arise that conflict with each other, "the presumption which on the facts is founded on the weightier considerations of policy and logic controls." Peter contends there were no conflicting presumptions because Kevin was a mere biological father, and alternatively, any conflict should have been resolved in his favor.

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10 Contrary to Peter's argument, A.R. would not be rendered "fatherless" by rebutting his presumption because Kevin's judgment of paternity remained intact. The fact Kevin's parental rights were subject to termination does not change the analysis.

Because Peter was the only presumed father in the case, the court did not apply Family Code section 7612, subdivision (b) to rebut his presumption of paternity. Thus, we need not address this contention.

D

The court also found Peter's presumption had been rebutted by Kevin's judgment of biological paternity under Family Code section 7612, subdivision (c). Peter contends this was error because: (1) there were no prior judgments of paternity in favor of another man at the time he was declared a presumed father; and (2) the court could not use Kevin's judgment of biological paternity, later entered in the same case, to rebut his presumed father status. However, in light of our conclusion Peter's presumption of paternity was properly rebutted under Family Code section 7612, subdivision (a), we need not address the propriety of the court's alternative ruling under Family Code section 7612, subdivision (c).

DISPOSITION

The orders are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.